UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11 Bankruptcy
INTREPID U.S.A., INC.	BKY No. 04-40416
INTREPID OF GOLDEN VALLEY, INC.	BKY No. 04-40462
F.C. ACQUISITION CORPORATION,	BKY No. 04-40418
	Case Nos. 04-41924 – 04-41988
Debtors.	

PRELIMINARY OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION TO APPROVE FIRST AMENDMENT TO POST-PETITION REVOLVING CREDIT AND SECURITY AGREEMENT

The Official Committee of Unsecured Creditors (the "Committee") submits this Preliminary Objection to the "Notice of Hearing and Motion to Approve First Amendment to Post-Petition Revolving Credit and Security Agreement" (the "Motion"), filed by the debtors in the above captioned administratively consolidated bankruptcy cases of Intrepid USA and its affiliates (collectively, "Debtors").

1. As of the date of this Objection, the Committee has significant preliminary objections to the Motion, which likely will be expanded after the Committee has a full opportunity to conduct a more thorough investigation into CapitalSource Finance, LLC's ("CapSource") motives in seeking amendments and modifications (the "Amendment") of the Post-Petition Revolving Credit and Security Agreement (the "DIP Credit Agreement") that it entered into with Debtors on or about April 30, 2004.

2. By way of background, in early April 2004, following the parties entering into a comprehensive settlement agreement that enabled the Debtors to obtain necessary DIP financing, the Debtors sought court permission to obtain such DIP financing.

3. Initially, the Debtors proposed to obtain the DIP loan from Abelco Finance Co. ("Abelco"). In selecting Abelco, the Debtors rejected an inferior proposal made by CapSource. As described by the Debtors in a supplement filed on April 13, the basic terms of the Abelco DIP loan were as follows:

(a) The post-petition revolving credit facility would be in the amount of $25 million with an approximately $3 million letter of credit subfacility. The initial amount available under the Facility would be $21 million, pending potential future agreement from DVI to allow a facility draw greater than $21 million.

(b) Interest will accrue at an annual rate equal to Interest will accrue at an annual rate equal to the JPMorgan Chase Bank reference rate plus 1.5% with a floor of 4.00% for such reference rate. The default rate will be 2% greater than the otherwise applicable rate. There is a closing fee of 1.5% of the facility ($315,000 on $21 million), an unused line fee equal to 0.75% per annum, a servicing fee not to exceed $5,000 per month and reimbursement of Abelco's expenses.

(c) Abelco would be entitled to an early termination fee of 1%, to be waived if Abelco provides exit financing.

(d) Available draws under the Facility would not exceed the lesser of $21 million or the borrowing base unless DVI agrees to a higher amount not to exceed $25 million. The borrowing base under the Abelco proposal was 85% of the net realizable value of Debtors' eligible accounts receivable. At the time, the Debtors stated their belief that Abelco's total borrowing base availability will be approximately $24-26 million.

(e) The term of the Abelco DIP Financing will be the earlier of twenty-four months, confirmation of a plan, or the failure to achieve certain milestones by dates to be agreed.

(f) Abelco would be able to terminate the Abelco DIP Financing and liquidate the collateral upon various events of default.

4. Simultaneous with the submission of the Abelco proposal, the Debtors were engaged in discussions with other DIP lenders, including CapSource, that were committed to providing DIP financing. The Debtors agreed to consider alternative lenders if they agreed to provide DIP financing on the same or better terms as those being offered by Abelco.

5. After lengthy meetings and negotiations, CapSource emerged as the lender providing the most favorable DIP financing. The Debtors, with the Committee's support and Court approval, entered into a DIP financing agreement with CapSource.

6. It is the Committee's understanding that since making the loan, CapSource has attempted to change the terms of the DIP loan, through concerted threats on the Debtors, such the ultimate terms are closer to the terms which the Debtors previously rejected at the time it selected CapSource. This appears to be a classic case of bait and switch on the part of a DIP lender.

7. In light of the foregoing facts, CapSource's actions and the Amendment itself are highly questionable. First, according to the financial information provided to the Committee (and CapSource), the Debtors are currently exceeding EBIDTAR and other financial projections. Second, the Debtors' financial statements make it clear that CapSource is adequately protected. Third, CapSource has not declared a default and, it is the Committee's understanding that the Debtors are not in default under the terms of the DIP Credit Agreement. As a result, the Committee does not understand the need for any amendments to the DIP Credit Agreement.

8. The Committee has just learned that CapSource recently took on a dual role in this case. Beyond being the DIP lender in this case, CapSource is now serving in some sort of managerial role in the bankruptcy cases of DVI and its related entities, including DVI Business Credit Receivables Corporation III ("Rec III") (collectively, "DVI"). As the Court is aware, DVI is in its own bankruptcy case pending in the District of Delaware. From the Committee's viewpoint, the Amendment seems designed to advance the interests and objectives of DVI. For example, the Amendment now mandates that for the life of the DIP Financing Agreement the Debtors employ investment bankers to sell the Debtors. While a sale is one of the possibilities

for emergence from bankruptcy, based on the financial performance to date, it is not the only option.

9. As such, through the Amendment, CapSource seeks to essentially revert the agreement back into the form that it originally proposed, removing many provisions that were inserted to protect the bankruptcy estate and that are considerably less favorable than the deal that CapSource originally agreed and sold the Debtors and Committee on. The Committee believes that the Amendments will benefit the pre-petition lenders, including Rec III, and because of its relationship with DVI, CapSource's motives in obtaining the Amendments are highly suspect. Due to these concerns, the Committee will seek Court authorization to conduct a 2004 examination of CapSource, including the production of all documentation and communications between CapSource and DVI, relating to Intrepid. Depending on the results of that discovery, the Committee reserves the right to amend and supplement this Opposition.

10. Aside from the general objections raised above, the Committee specifically objects to the Amendment as follows:

a. The $50,000 amendment fee referenced in paragraph 9 of the Motion is unwarranted and unreasonable. The Debtors are not in default under the DIP Credit Agreement. Thus, there is no need to amend the agreement other than CapSource's attempt to advance the interests of DVI and revert to its original DIP proposal. Secondly, the magnitude of the amendment fee is entirely unreasonable for the amount of work that was required to draft a six-page Amendment—three pages of which contain boilerplate provisions.

b. In Paragraphs 2(a), (b) and (d)(1) of the Amendment, CapSource seeks to change the borrowing formula and the budgetary compliance requirements. No explanation is given as to why these changes are necessary or beneficial to the Debtors. This is particularly true

in light of the original Abelco offer, which CapSource agreed to match, to lend 85% against eligible accounts receivable and did not impose such budgetary constraints.

c. In Paragraph 2(h) of the Amendment, CapSource seeks to change the "float"—the length of time between when payments are received to the date on which new advances are made--from 3 days to 5 days. No explanation is offered as to why this extension is needed or beneficial to the estate. This change is another example by which CapSource is trying to unduly profit—by enjoying the free use of money for two additional days.

d. As noted in paragraph 9 of the Motion, the DIP Lender seeks to reduce the Carve-Out for professionals that was established early in this case, as that term is defined in paragraph 11(b) of the Court's Final Order Authorizing Debtors to Enter into Post-Petition Financing from $1,500,000 to $500,000. Again, the Committee objects to this amendment since CapSource has not declared a default and Debtors are not in default under the DIP Credit Agreement, thus there is no need to amend the DIP Credit Agreement of Court's Order by reducing the amount of the Carve-Out.

e. In paragraph 8(c) of the Motion, CapSource seeks to require Debtors to "maintain the employment of an investment banker in connection with a sale or recapitalization of the business." Once again, the Committee objects to this amendment as an unnecessary intrusion into the affairs of the Debtors since CapSource has not declared a default and Debtors are not in default under the DIP Credit Agreement. Furthermore, Debtors' financial results to date have exceeded expectations and projections, and Debtors have been making timely loan payments to CapSource, making it unlikely that Debtors would need to be liquidated or recapitalized. "Requiring" permanent employment of investment bankers to sell the Debtors unduly restricts the business judgment of the Debtors and the Committee and would add

unneeded expense to the estate. Also, given the recent financial strength exhibited by Debtors, the Committee questions CapSource's motivation in making such a demand and is concerned that such a request reflects CapSource's desire to facilitate the failure of Debtors' reorganization efforts and to liquidate Debtors as soon as possible. The Committee believes that DVI would benefit from the liquidation of Debtors and that this amendment is sought for its benefit.

11. The Committee reserves the right to supplement this Objection and gives notice that it may call and/or examine a representative of the Debtors and/or CapSource in connection with the Motion.

WHEREFORE, for the foregoing reasons, the Committee requests that the Court:

1. Deny the Motion;

2. In the alternative, continue the hearing on the Motion to provide the Committee with additional time to conduct an investigation into the relationship between CapSource and DVI; and

3. Provide such other relief that the Court deems just and equitable.

Dated: August 13, 2004.

Respectfully Submitted,

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11
INTREPID U.S.A., INC.	BKY No. 04-40416
INTREPID OF GOLDEN VALLEY, INC.	BKY No. 04-40462
F.C. ACQUISITION CORPORATION,	BKY No. 04-40418
	Case Nos. 04-41924 – 04-41988
Debtors.	

ORDER

The matter came before the Court on the Motion of the Debtors to Approve First Amendment to Post-Petition Revolving Credit and Security Agreement ("Motion") filed by the debtors in the above-captioned, jointly administered cases.

Appearances, if any, were as noted in the Court's record. Based upon the files and the record and arguments of counsel in this matter,

IT IS HEREBY ORDERED:

That the Motion of the Debtors is in all tings DENIED.

BY THE COURT:

Dated: August ___, 2004

_____
Nancy C. Dreher
Unites States Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11 Bankruptcy
INTREPID U.S.A., INC.,	BKY No. 04-40416
and Jointly Administered Cases,	BKY No. 04-40462
	BKY No. 04-40418
Debtors.	BKY Nos. 04-41924 – 04-41988

UNSWORN CERTIFICATE OF SERVICE

I, Jennifer K. Grove, declare under penalty of perjury that on August 13, 2004, I mailed a copy of the Preliminary Objection of Official Committee of Unsecured Creditors to Motion to Approve First Amendment to Post-Petition Revolving Credit and Security Agreement and Proposed Order by first class mail, postage prepaid to the following entities.

See attached service list.

Dated: August 13, 2004

By: /e/ Jennifer K. Grove
Jennifer K. Grove

Service List: Intrepid II (Doc. No. 2964710) Updated: August 13, 2004

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